Cr A 912/96 (R)

XII-189/(Jail)
C. J. P. R. 11/94/2,000

CF0000060874

APPEAL OF PRISONER

Division Bench (Criminal)

No. ૧૭૨/૫૩ Name [illegible]

Father's name [illegible]

Residence [illegible] Age [illegible]

Sentenced to આજીવન કારાવાસ On ૬/૭/૬૫

Under section ૩૦૨ ભા.દં.વિ. by અધિક સેશન્સ ન્યાયાધીશ, ઝાબુઆ (રાજગઢ)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... ૬/૭/૬૫

2 Date on which copy received ... ૧૫/૭/૬૫

3 Date on which Appeal sent ... ૧૧/૯૫

4 Whether the prisoner wishes to be represented or ~~not~~ - Yes / No

---

No. ૭૭૭/૫૩ Name [illegible]

Confined in [illegible] Jail ઝાબુઆ (મ.પ્ર.)

No. ૪૫૫ (Cash) Dated ... 199 ૬.૧૧.૯૬

Forwarded to the CHIEF JUDICIAL MAGISTRATE [illegible] togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
[illegible]

Date of receipt in ... office ... 5-7-96 to 2-11-95

Date of receipt record to accompany the ... 5-7-96 to 4-7-95 365 days

Memo of Appeal to the Appellate court ... July 27 +121

August 31 +86

No ... Dated ... 199 Sep 30 +60

Oct 31

Forwarded to the ... Nov 2 +26 days

High Court of Madhya Pradesh
JABALPUR
- 8 NOV 1995
Reg. No. 9105

121

Date of receipt in Appellate Court ...

(P. T. O.)

(10)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cri A-912/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 912 of 1996

Appellant : Prahlad

Vs.

Respondent : State of Madhya Pradesh

Shri K.K.Singh, learned counsel for the appellant.

Shri Ravindra Agrawal, learned P.L. for the respondent/State.

ORAL JUDGMENT

(02.03.2006)

Per L.C. Bhadoo, J

By this appeal under section 374 (2) of the Code of Criminal Procedure the accused/appellant has questioned the legality and correctness of the judgment of conviction and order of sentence dated 05.07.1994 passed by learned Additional Sessions Judge, Jashpurnagar, Dist-Raigarh in Sessions Trial No. 278/93 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under section 302 of the IPC sentenced him to undergo imprisonment for life.

[पीछे देखिये

KI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A 912/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Case of the prosecution, in brief, is that PW-1 Suresh lodged the report P-1 in police station – Kansabel on 11.06.1993 at 13.00 hours to the effect that Narikpal transferred two *bighas* of land in the name of his son-in-law Sonsai on account of which the son of Narikpal namely Sainathram was unhappy. On that day at about 8.00 a.m. when Sonsai was returning to his house after collecting *mahua* flowers he met accused Prahlad, the son of Sainathram, near the house of Janakram, on which Prahlad said that "you have lodged the report against us, you should withdraw your complaint otherwise you will be killed". However, Sonsai went to his house from where he went to the house of Kotwar. Thereafter Mainathram came there and informed him that Prahlad had attacked and murdered Sukhni Bai with axe when she was cleansing the utensils. Thereafter, he along with Kotwar went to the place of occurrence and saw that Sukhni Bai was lying.There were injuries on her neck and left shoulder. Receiving this report Station House Officer,Kansabel registered the offence against the accused/appellant under section 302 of the Indian Penal Code, left for the scene of occurrence and prepared the site plan P-2 of the place of occurrence. A green colour sari of Sukhni Bai was taken into possession under P-4. Body of Sukhni Bai was sent to Primary Health Centre, Kansabel for postmortem examination where Dr.Y.K.Toppo (PW-6) conducted the postmortem and submitted the report P-6. The doctor noticed four incised wounds on the neck and the chest of Sukhni Bai. The investigating officer also sought the opinion of the doctor as to whether the injuries which were found on the body of Sukhni Bai could be caused from the axe recovered at the instance of the appellant. Doctor gave his opinion

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.-912/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

P-6 to the effect that the injuries present on the body of Sukhni Bai could be caused with the axe so recovered. Panchanama of the body was prepared by the investigating officer. Bloodstained and plain soil was taken into possession under P-8 from the place of occurrence. Accused gave memorandum P-9 and in pursuance of the said memorandum a Terri cot shirt, lungi of the accused and axe, the weapon of the offence were recovered under P-10. The articles so recovered were sent for chemical examination to the Forensic Science Laboratory for opinion and report P-12 was received from there.

3. After completing the investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Jashpurnagar who in turn committed the case to the Court of Sessions Judge, Raigarh from where Additional Sessions Judge, Jashpurnagar received the case on transfer for trail.

4. In order to establish the involvement of the accused in the crime in question the prosecution has examined nine witnesses. Statement of the accused was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him. Learned Additional Sessions Judge after hearing learned counsel for the parties convicted and sentenced the accused/appellant as mentioned in paragraph – 1 of this judgment.

5. We have heard Shri K.K. Singh, learned counsel for the appellant and Shri Ravindra Agrawal, learned counsel for the State.

[पीछे देखिये

HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 912/96 सन् 200

विरुद्ध

आदेश का तिथांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

6. Homicidal death of Sukhni Bai is not in dispute.

7. As far as involvement of the accused in the crime in question is concerned, the same is based on the evidence of PW-2 Neelavati, grand daughter of the deceased and PW-3 Sirimati Bai. PW-2 Neelavati is a child witness who was aged about 11 years at the time of her examination. She has stated that on the fateful day at about 9.00 a.m. she was taking her meal and her maternal grandmother was cleansing the utensils, at that time the accused came armed with axe and attacked her maternal grandmother Sukhni Bai on her neck as a result of which the neck was cut. He attacked her maternal grandmother twice as a result of which she fell down and died. On seeing the incident she raised screams and the accused fled away from the place of occurrence. In the cross examination she has categorically stated that she witnessed the accused assaulting her maternal grandmother. PW-3 Sirimati Bai, wife of Suresh, has stated that on the fateful day at about 8.00 a.m. she was brooming her house, at that time accused came and attacked on the neck and chest of Sukhni Bai and then ran away. Accused attacked Sukhni Bai on account of land dispute and Sukhni Bai succumbed to the injuries on the spot. Blood was oozing out of the neck. Neelavati Bai was present at that time.

8. Learned counsel for the accused/appellant argued that Neelavati is a child witness and the learned trial Court administered oath to her without ascertaining from her whether she understood the sanctity of oath or not.

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 312/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —S—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. It is true that oath was administered to a child witness. In the first instance it was the duty of the trial Court to ascertain from the child witness as to whether she was understating the sanctity of the oath or not and on reaching to the conclusion in affirmative the learned trial Court ought to have administered oath to her. This is mere irregularity and on the ground of this irregularity the evidence of this witness can not be rejected. As per the settled law before placing reliance on the evidence of a child witness the Court is required to scrutinize the evidence of a child witness with care and caution. Section 118 of the Evidence Act envisages that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. The Apex Court in the matter of **Arbind Singh Vs. State of Bihar** reported in **1995 Supp (4) Supreme Court Cases 416** has held that child witness is prone to tutoring and hence court should look for corroboration particularly when the evidence betrays traces of tutoring. Again in the matter of **Panchhi and others Vs. State of U.P.** reported in **AIR 1998 Supreme Court 2726** the Apex Court has held that it cannot be said that the evidence of a child witness would always stand irretrievable stigmatized. It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring. The evidence of a child

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A. 912/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

witness is permissible if such witness is found competent to testify and the court after careful scrutiny of its evidence is convinced about the quality and reliability of the same, where the witness described the detail scenario implicating the appellant, the conviction can be based placing reliance thereupon.

10. In the light of above principle if we scrutinize the evidence of Neelavati, she has categorically stated that at the time of incident she was present in the house and when she was taking meal, accused came with axe and attacked Sukhni Bai, her maternal grandmother twice, as a result of which she died on the spot. In the cross examination of this witness the defence has not been able to bring any circumstance on record that in any way makes the evidence of this child witness unreliable. Further the evidence of this witness stands corroborated by the medical evidence and the corresponding injuries found on the body of Sukhni Bai which were described by this witness. Moreover, PW-3 Sirimati Bai has also corroborated the evidence of PW-2 Neelavati.

11. Shri Singh also argued that there is contradiction in the evidence of PW-3 Sirimati Bai as in the examination-in-chief she has stated that at the time of incident she was brooming the house whereas in the cross-examination she has stated that she was standing on the gate. This is a minor contradiction and merely on this ground the evidence of this witness cannot be overlooked or rejected. Evidence of these witnesses stands corroborated by the fact that weapon of the offence i.e. axe was recovered at the instance of the accused/appellant and even bloodstained cloths of

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक CrA 912/96 सन् 200

विरुद्ध

आदेश का तिथांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the accused were recovered from his possession and as per the F.S.L. report P-12 clothes of the accused were found bloodstained. However no blood was found on the axe. Mr. Singh further argued that as no blood was found on the axe, recovery of the axe cannot be connected with the crime in question. It is true that no blood was found on the axe but merely on this ground it is difficult to reject the circumstance as the doctor has opined as per report P-6 that the injuries which were found on the body of Sukhni Bai could be caused by the axe in question. Moreover, clothes of the accused were found stained with blood, therefore, ocular evidence of PW-2 Neelavati and PW-3 Sirimati Bai supported by the circumstantial evidence and recovery of bloodstained cloths of the accused axe, establish the involvement of the accused in the crime in question. From the post mortem report and the evidence of Dr. Toppo PW-6 conducted the post mortem and found incised wound on the neck below the mandible region in the size of 3 x ¼ x 2 inches as a result of which windpipe was also cut, second injury on the chest in the size of 2 ½ x ¼ x 1 inches, the windpipe and nearby blood vessels cut and that there were injuries near the third and fourth ribs and death of Sukhni Bai was homicidal in nature and the deceased died due to respiratory failure, guilt of the accused is established.

12. Learned counsel for the accused/appellant placing reliance on the judgment of the Apex Court in the matter of **Kallikatt Kunhu Vs. State of Kerala** reported in **AIR 2000 S.C. 1235** argued that there were no blood stains on the axe and therefore the same cannot be connected with the crime in question.

[पीछे देखिये

HLAFC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.912/96 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13. We are of the considered opinion that the above judgment is of no help to the accused/appellant as the same is distinguishable on facts. In that case the Apex Court reached the conclusion that as the inquest report clearly indicated that dagger was found in a sheath on the place of occurrence. It was also noticed that dhoti and bottles were found in the southern side of the pathway starting eastwards to the house of the deceased, therefore, the court reached the conclusion that these two circumstances are enough to demolish the prosecution case. But in the present case the facts are entirely different as the axe was recovered on the memorandum of the accused and the doctor has given his opinion that the injuries found on the body of the deceased could be caused with the said weapon.

14. Looking to the nature of injuries that too on the vital part of the deceased we are of the considered opinion that the accused has rightly been convicted under section 302 of the IPC and sentenced to undergo imprisonment for life.

15. In the result, we are of the considered opinion that the appeal is devoid of merit and substance and the same is liable to be dismissed. It is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

[पीछे देखिये

3.4.06